

E-Filed On 01/15/09

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Counsel for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE  
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST  
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED  
FUND, LLC,

USA SECURITIES, LLC,  
Debtors.

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.  
BK-S-06-10725-LBR

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Date: February 20, 2009  
Time: 9:30 a.m.

**DECLARATION OF GEOFFREY L. BERMAN IN SUPPORT OF THE MOTION  
SEEKING THE APPROVAL OF THE SETTLEMENT AGREEMENT BY AND  
BETWEEN THE USACM LIQUIDATING TRUST, USA INVESTMENT PARTNERS,  
LLC, TOBLAK, LLC, DDH FINANCIAL CORP., AND TANAMERA COMMERCIAL  
DEVELOPMENT, LLC**

I, Geoffrey L. Berman, hereby declare as follows:

1. I am over the age of eighteen (18) and am mentally competent. I have personal knowledge of the facts in this matter and if called upon to testify, could and would do so.

2. I am the duly-appointed trustee for the USACM Liquidating Trust (the "USACM

1 Trustee"), and I make this declaration in support of the Motion Seeking The Approval Of The  
2 Settlement Agreement By And Between The USACM Liquidating Trust, USA Investment  
3 Partners, LLC, Toblak, LLC, DDH Financial Corp., And Tanamera Commercial Development,  
4 LLC (the "Motion").<sup>1</sup>

5 3. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit  
6 "A."

7 4. On April 13, 2006, USA Commercial Mortgage Company ("USACM") filed a  
8 voluntary Chapter 11 petition in the United States Bankruptcy Court for the District of Nevada  
9 (the "Bankruptcy Court"), which bankruptcy case was jointly administered with several related  
10 cases under bankruptcy case number BK-S-06-10725-LBR (the "USACM Bankruptcy Case").  
11 The Bankruptcy Court confirmed the Third Amended Joint Chapter 11 Plan of Reorganization  
12 (the "Joint Plan") pursuant to an order entered on January 8, 2007 (the "Confirmation Order")  
13 and the Joint Plan became effective on March 12, 2007. The USACM Trust was created  
14 pursuant to the Joint Plan and the Confirmation Order and I serve as the trustee of the USACM  
15 Trust. Pursuant to the terms of the Third Amended Joint Chapter 11 Plan of Reorganization and  
16 the Confirmation Order, the USACM Trust now holds any and all potential claims and causes of  
17 action, whether arising pre-petition or post-petition, that USACM and the USACM Trust may  
18 have or may at any time have had.

19 5. On or about May 18, 2004, in Case No. the District Court entered a Stipulation  
20 And Order For Limited Stay Pending Appeal (the "Stipulation") which, pending the outcome of  
21 the Lowe Appeal, among other things, authorized USACM to form Toblak as an affiliated entity  
22 to take title to the remaining Park Sites, and to enter into an agreement with the City to dedicate  
23 these Park Sites to the City with or without their construction.

24 6. The Stipulation further provided that any proceeds paid by the City upon  
25 dedication of the Park Sites were to be held in escrow with Ticor Title Company ("Ticor Title")  
26 pending the outcome of the Lowe Appeal, with such proceeds being distributed to the prevailing

27 <sup>1</sup> Unless otherwise expressly stated herein, all undefined, capitalized terms shall have the meaning ascribed to them  
28 in the Motion.

1 party after entry of an order from the Bankruptcy Court.

2 7. Upon information and belief, M.P. Tanamera, LLC, USACM, DDH, and USAIP  
3 entered into that certain Amended And Restated Pledge Agreement (the "Amended Pledge  
4 Agreement") effective January 1, 2006, which agreement provided in relevant part as follows:

5 Toblak, LLC, an affiliate of Pledgee [USACM] entered into a Second  
6 Amended Double Diamond Ranch Parks Agreement ("Parks Agreement")  
7 with the City of Reno and Double Diamond Ranch, LLC which is  
8 expected to result in net profits to Toblak, LLC in excess of the legal fees  
9 outlined in Recital D above, indirectly benefiting Pledgee [USACM].  
10 Pledgee [USACM] agrees that Kreg Rowe was instrumental in providing  
11 this opportunity to Pledgee and agrees that any profits stemming from the  
12 Parks Agreement will first be applied to any unreimbursed legal costs  
associated with obtaining the Parks Agreement, including the associated  
litigation and appeal, then to unreimbursed legal fees outlined in Recital  
D, third to any remaining balance under the Guaranteed Debt with any  
remaining amount split 50% with DDH and 50% with Pledgee [USACM]  
Pledgee [USACM] agrees to provide an accounting of the legal fees and  
application for reimbursement filed with the court along with a copy of the  
court's award with reasonable supporting information.

13 8. In January of 2006, the Lowe Appeal was resolved in favor of USACM. A true  
14 and correct copy of the opinion on the Appeal is attached hereto as Exhibit "B."

15 9. Certain disputes have arisen by and between DDH and the USACM Trust  
16 regarding the proper distributions to be made pursuant to the above-stated provision of the  
17 Amended Pledge Agreement and the parties' respective liability related to Toblak's operations  
18 (the "Disputes").

19 10. In order to minimize the cost and expense of litigation, as well as the extensive  
20 time that must be dedicated to such a proceeding, and in view of the risk inherent in proceeding  
21 to trial, the parties have engaged in substantial settlement negotiations to resolve the Disputes.  
22 These settlement discussions were at arms-length and have culminated in the Settlement  
23 Agreement.

24 11. Both DDH and the USACM Trust have asserted substantially greater interests in  
25 the Park Funds than provided under the terms of the Settlement Agreement and have supported  
26 such assertions with reasoned interpretations of the pertinent documents. Thus, neither DDH nor  
27 the USACM Trust's success is certain were this matter fully litigated. The Settlement Agreement  
28 therefore represents that culmination of arms-length negotiations undertaken with an

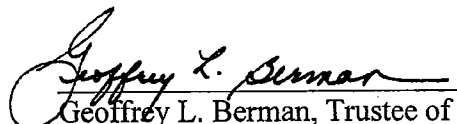
1 appreciation of the extensive time and expense required to try the issues necessary for the Court  
2 to render a determination as to the proper distribution of the Park Funds under the terms of the  
3 Amended Pledge Agreement. This is particularly true as the parties have reached this  
4 compromise prior to having commenced an adversary proceeding, having undertaken discovery,  
5 or having retained any experts. Further, as an adversary proceeding has not yet been  
6 commenced, the prompt resolution of the Disputes through the contemplated Settlement  
7 Agreement is economically beneficial for the parties.

8 12. Second, the USACM Trust has asserted that the interests of USAIP in the  
9 proceeds from the development of the Park Sites were improperly obtained by USAIP rather than  
10 USACM when Toblak was created. Thus, the prompt resolution of the Disputes also resolves  
11 the USACM Trust's alleged claim against USAIP arising therefrom and, I am advised, will  
12 permit USAIP to distribute Toblak's proceeds and wind-up and dissolve Toblak, thereby  
13 precluding any subsequently incurred liability from flowing-up to USAIP from Toblak. USAIP  
14 and the USACM Trust will also receive an invaluable release from the parties with regard to any  
15 potential claims relating to the Park Sites and/or Park Funds that may be asserted against them.

16 13. I believe that the probability of success is outweighed by the costs and inherent  
17 delays to be incurred in litigating the Disputes.

18 14. After a thorough evaluation of all available information, I have determined that  
19 approval of the Settlement Agreement is fair and equitable and in the best interest of USACM's  
20 creditors.

21 Dated this 9th day of January, 2009.

22   
23 Geoffrey L. Berman, Trustee of the  
24 USACM Liquidating Trust  
25  
26  
27  
28

## **EXHIBIT A**

**SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

This SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (the "Agreement") is made and entered into by the USACM Liquidating Trust (the "USACM Trust"), as a successor to USA Commercial Mortgage Company, Lisa M. Poulin ("Poulin"), as the Chapter 11 Trustee for USA Investment Partners, LLC ("USAIP"), Toblak, LLC ("Toblak"), DDH Financial Corp. ("DDH"), and Tanamera Commercial Development, LLC ("Tanamera"). These entities are referred to collectively as the "Parties."

**I.**

**RECITALS**

A. On April 13, 2006, USA Commercial Mortgage Company ("USACM") filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court"), which bankruptcy case was jointly administered with several related cases under Bankruptcy Case No. BK-S-06-10725-LBR (the "USA Capital Bankruptcy Case"). The Bankruptcy Court confirmed the Third Amended Joint Chapter 11 Plan of Reorganization (the "Joint Plan") pursuant to an order entered on January 8, 2007 (the "Confirmation Order"). The Joint Plan became effective on March 12, 2007. The USACM Trust was created pursuant to the Joint Plan and the Confirmation Order. Geoffrey L. Berman (the "USACM Trustee") serves as the trustee of the USACM Trust. The USACM Trust now holds any and all potential claims and causes of action, whether arising pre-petition or post-petition, that USACM and the USACM Trust may have or may at any time have had.

B. On April 4, 2007, USA Capital Diversified Trust Deed Fund, LLC, the USACM Trust, and Alabruj Investments, LLC filed an involuntary petition under Chapter 11 of the Bankruptcy Code against USAIP, thereby commencing Bankruptcy Case No. BK-S-07-11821-LBR (the "USAIP Bankruptcy Case"), which case is pending before the Bankruptcy Court. On April 6, 2007, the Bankruptcy Court appointed Poulin as the interim trustee in the USAIP Bankruptcy Case and on May 9, 2007, an order for relief was entered in the USAIP Bankruptcy Case, with Poulin remaining as the Chapter 11 trustee in the USAIP Bankruptcy Case.

C. Double Diamond Ranch, LLC ("DDR") and the City of Reno, Nevada entered into agreements whereby DDR would construct 5 neighborhood park sites (the "Park Sites") in the South Meadows Properties Planned Unit Development, Phase III, also known as Double Diamond Ranch, and committed to completing certain improvements to the Double Diamond Ranch trail system as further described in the agreements.

D. The Park Sites have been developed and trail construction obligations satisfied. The City of Reno has received title to the Park Sites and has made payments for the development of the parks. These payments after development, property tax and other expenses (the "Park Funds") are held in three separate accounts:

1. An escrow account held by Ticor Title in the amount of approximately \$187,996.50 (the "Ticor Title Account");

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**I.**

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1. An escrow account held by Ticor Title in the amount of approximately \$187,996.50 (the "Ticor Title Account");



2. A bank account held by DDH in the amount of approximately \$163,645.69 (the "DDH Account");
3. A bank account held in the name of Toblak and under the control of Poulin in the amount of approximately \$198,081.49 (the "USAIP Account").

E. Pursuant to an Amended and Restated Pledge Agreement effective January 1, 2006 (the "Amended and Restated Pledge Agreement," attached hereto as Exhibit A), both USACM and DDH claim rights to the funds held in the three above-stated Accounts and have mutual disputes about the amount each should receive.

F. In order to avoid the costs and uncertainty of litigation, the Parties have agreed to settle the dispute regarding distribution of the Park Funds and all related disputes and controversies between them regarding the Park Sites on the terms set forth in this Agreement without resort to litigation between them.

## II.

### TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the covenants, promises and releases set forth herein, and in full settlement of all such claims, the Parties hereby agree on behalf of themselves and any and all of their predecessors, successors, assigns, parents, insurers, and any other parties or persons claiming by, through or under any of the Parties hereto, as follows:

#### A. Settlement Consideration.

##### 1. Settlement Payments:

- a. The USACM Trust and DDH have agreed to a 70/30 division of the Park Funds: The USACM Trust shall receive 70% of the Park Funds and DDH shall receive 30% of the Park Funds.
- b. The USACM Trust shall receive the funds held in the Tigor Title Account (approximately \$187,996.50) (the "Tigor Title Funds").
- c. Upon the Effective Date of this Agreement, DDH shall pay itself \$109,093 from the DDH Account. The remainder of the funds in the DDH Account (not less than \$56,398.95) shall remain in the DDH Account and shall be held separately from any other DDH assets.

In the event that Toblak, USAIP or the USACM Trust have received the Tigor Title Funds on or before the Effective Date, then DDH shall pay itself from the DDH Account, the balance of the funds held within the DDH Account (approximately \$56,398.95).

2. A bank account held by DDH in the amount of approximately \$163,645.69 (the "DDH Account");
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- d. Upon the Effective Date, Poulin shall transfer the balance held in the USAIP Account (approximately \$198,081.49) to the USACM Trust. In addition, in the event the Ticor Title Funds are paid to Toblak or USAIP after the Effective Date of this Agreement, Poulin shall transfer 100% of the Ticor Title Funds to the USACM Trust within two (2) business days of their receipt.
- e. In the event the Ticor Title Funds are distributed to the USACM Trust, Toblak, or USAIP after the Effective Date of this Agreement, then, within two (2) business days following receipt of the Ticor Title Funds, counsel for the Party receiving such funds shall notify DDH's counsel, Kaaran Thomas, in writing, of the receipt of the Ticor Title Funds. Thereafter, DDH is authorized to pay itself the remainder of the funds held within the DDH Account (approximately \$56,398.95).

In the unlikely event that that the Bankruptcy Court in Case No. BK-N-01-33665-GWZ denies the USACM's Trust's motion seeking the release of the Ticor Title Funds to the USACM Trust (the "Ticor Title Motion"), the USACM Trust shall provide to DDH the Bankruptcy Court order denying the Ticor Title Motion, along with any pleadings related to the Ticor Title Motion. Within two (2) business days from receipt of the Bankruptcy Court order denying the Ticor Title Motion, DDH shall pay to the USACM Trust the remainder of funds held within the DDH Account (not less than \$56,398.95).

2. Duty to Cooperate to Obtain Release of Funds. Pursuant to a Stipulation and Order for Limited Stay Pending Appeal signed by the United States District Court for the District of Nevada (the "District Court") on May 17, 2004 in Cause No. 3:03-cv-00156-HDM-VPC to obtain release of the Ticor Title Funds, the Bankruptcy Court must enter an order in Bankruptcy Case No. BK-N-01-33665-GWZ directing Ticor Title to release the Ticor Title Funds. The Parties agree to sign and submit an order substantially in the form attached hereto as Exhibit B. All Parties agree to cooperate and provide all information and consents necessary to obtain a Bankruptcy Court order directing Ticor Title to release the Ticor Title Funds to the USACM Trust. In accordance with the Settlement Payment section A.1.b., above, the Ticor Title Funds will be paid to the USACM Trust.

## **B. Releases.**

1 Release of Claims by the USACM Trust. Upon the Effective Date and the release of the Ticor Title Account funds and the USAIP Account funds, the USACM Trust fully releases and discharges DDH, Tanamera, Toblak, Poulin, and USAIP and all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or related to the Park Sites and/or the Park Funds. This release includes all claims that the USACM Trust

- d. Upon the Effective Date, Poulin shall transfer the balance held in the USAIP Account (approximately \$198,081.49) to the USACM Trust. In addition, in the event the Tigor Title Funds are paid to Toblak or USAIP after the Effective Date of this Agreement, Poulin shall transfer 100% of the Tigor Title Funds to the USACM Trust within two (2) business days of their receipt.
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- d. Upon the Effective Date, Poulin shall transfer the balance held in the USAIP Account (approximately \$198,081.49) to the USACM Trust.. In addition, in the event the Tigor Title Funds are paid to Toblak or USAIP after the Effective Date of this Agreement, Poulin shall transfer 100% of the Tigor Title Funds to the USACM Trust within two (2) business days of their receipt.
- e. In the event the Tigor Title Funds are distributed to the USACM Trust, Toblak, or USAIP after the Effective Date of this Agreement, then, within two (2) business days following receipt of the Tigor Title Funds, counsel for the Party receiving such funds shall notify DDH's counsel, Kaaran Thomas, in writing, of the receipt of the Tigor Title Funds. Thereafter, DDH is authorized to pay itself the remainder of the funds held within the DDH Account (approximately \$56,398.95).

In the unlikely event that that the Bankruptcy Court in Case No. BK-N-01-33665-GWZ denies the USACM's Trust's motion seeking the release of the Tigor Title Funds to the USACM Trust (the "Tigor Title Motion"), the USACM Trust shall provide to DDH the Bankruptcy Court order denying the Tigor Title Motion,, along with any pleadings related to the Tigor Title Motion. Within two (2) business days from receipt of the Bankruptcy Court order denying the Tigor Title Motion, DDH shall pay to the USACM Trust the remainder of funds held within the DDH Account (not less than \$56,398.95).

2. Duty to Cooperate to Obtain Release of Funds. Pursuant to a Stipulation and Order for Limited Stay Pending Appeal signed by the United States District Court for the District of Nevada (the "District Court") on May 17, 2004 in Cause No. 3:03-cv-00156-HDM-VPC to obtain release of the Tigor Title Funds, the Bankruptcy Court must enter an order in Bankruptcy Case No. BK-N-01-33665-GWZ directing Tigor Title to release the Tigor Title Funds. The Parties agree to sign and submit an order substantially in the form attached hereto as Exhibit B. All Parties agree to cooperate and provide all information and consents necessary to obtain a Bankruptcy Court order directing Tigor Title to release the Tigor Title Funds to the USACM Trust. In accordance with the Settlement Payment section A.1.b., above, the Tigor Title Funds will be paid to the USACM Trust.

## B. Releases.

1 Release of Claims by the USACM Trust. Upon the Effective Date and the release of the Tigor Title Account funds and the USAIP Account funds, the USACM Trust fully releases and discharges DDH, Tanamera, Toblak, Poulin, and USAIP and all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or related to the Park Sites and/or the Park Funds. This release includes all claims that the USACM Trust



ever had or now has against DDH, Tanamera, Toblak, Poulin, and USAIP relating to the Park Sites and/or the Park Funds, provided, however, that the USACM Trust does not release DDH, Tanamera, Toblak, Poulin, and USAIP from any obligations under this Agreement (collectively, the "USACM Released Claims"). This release is expressly limited to any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or directly related to the Park Sites and/or the Park Funds and does not provide any alternate release to the Parties or any third-party.

2. Release of Claims by DDH and Tanamera. Upon the Effective Date and the release of the Ticor Title Account funds and the USAIP Account funds, DDH and Tanamera for themselves and on behalf of all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, fully releases and discharges USACM, the USACM Trust, the USACM Trustee, USAIP, Poulin and Toblak and all of their present and former trustees, managers, employees, agents, consultants, attorneys, directors, and officers, and their respective insurers in their capacities as such from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or related to the Park Sites and/or the Park Funds. This release includes all claims that DDH and/or Tanamera ever had or now has against the USACM, the USACM Trust, the USACM Trustee, Poulin, USAIP and Toblak relating to the Park Sites and/or the Park Funds, provided, however, that DDH and Tanamera do not release USACM, the USACM Trust, the USACM Trustee, USAIP, Poulin and Toblak from their obligations under this Agreement (collectively, the "DDH/Tanamera Released Claims"). This release is expressly limited to any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or directly related to the Park Sites and/or the Park Funds and does not provide any alternate release to the Parties or any third-party.

3. Release of Claims by Toblak and USAIP. Upon the Effective Date and the release of the Ticor Title Account funds and the USAIP Account funds, USAIP and Toblak for themselves and on behalf of all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, fully releases and discharges USACM, the USACM Trust, the USACM Trustee, DDH and Tanamera and all of their present and former trustees, managers, employees, agents, consultants, attorneys, directors, and officers, and their respective insurers in their capacities as such from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or directly related to the Park Sites and/or the Park Funds. This release includes all claims that USAIP and/or Toblak ever had or now has against the USACM, the USACM Trust, the USACM Trustee, DDH and/or Tanamera relating to the Park Sites and/or the Park Funds, provided, however, that Toblak and USAIP do not release USACM, the USACM Trust, the USACM Trustee, DDH and Tanamera from their obligations under this Agreement (collectively, the "USAIP/Toblak Released Claims"). This release is expressly limited to any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or directly related to the Park Sites and/or the Park Funds and does not provide any alternate release to the Parties or any third-party.



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3. Release of Claims by Toblak and USAIP. Upon the Effective Date and the and release of the Ticor Title Account funds and the USAIP Account funds, USAIP and Toblak for themselves and on behalf of all of their present and former principals, employees, staff, predecessors and successors, and their respective attorneys, consultants, adjustors and insurers in their capacities as such, fully releases and discharges USACM, the USACM Trust, the USACM Trustee, DDH and Tanamera and all of their present and former trustees, managers, employees, agents, consultants, attorneys, directors, and officers, and their respective insurers in their capacities as such from any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or directly related to the Park Sites and/or the Park Funds. This release includes all claims that USAIP and/or Toblak ever had or now has against the USACM, the USACM Trust, the USACM Trustee, DDH and/or Tanamera relating to the Park Sites and/or the Park Funds, provided, however, that Toblak and USAIP do not release USACM, the USACM Trust, the USACM Trustee, DDH and Tanamera from their obligations under this Agreement (collectively, the "USAIP/Toblak Released Claims"). This release is expressly limited to any and all claims, demands, damages, liabilities, actions, causes of action or suits at law or in equity arising out of or directly related to the Park Sites and/or the Park Funds and does not provide any alternate release to the Parties or any third-party.

**C. General Terms and Provisions**

1. Legal Costs and Expenses. Each Party agrees to pay its own legal costs and expenses incurred in connection with this Agreement.

2. Effective Date. As used herein, "Effective Date" means the first business day which is eleven (11) days after entry of an order by the Bankruptcy Court in the USACM Bankruptcy Case authorizing the USACM Trust to enter into the Agreement, as well as entry of an order by the Bankruptcy Court in the USAIP Bankruptcy Court authorizing, pursuant to Fed.R.Bankr.P. 9019, USAIP to enter into the Agreement (collectively, the "Approval Orders"). Unless otherwise ordered by a court, the Effective Date will occur on the first business day which is more than ten (10) days after entry of the Approval Orders notwithstanding any pending appeal commenced by one of the Parties or any third-party. If any stay is imposed as to the effectiveness of this Agreement as a result of an appeal, upon written notification to the other Parties, any Party may deem this agreement void and nonbinding on the Parties.

3. Notice to the Parties. Any notices in connection with this Agreement to each of the Parties shall be given, by fax and by certified mail, to the following individuals:

For the USACM Trust:

Geoffrey L. Berman  
DEVELOPMENT SPECIALISTS, INC.  
333 South Grand Avenue, Suite 4070  
Los Angeles, California 90071-1544  
Telephone: (213) 617-2717  
Facsimile: (213) 617-2718

Barbara Whiten Balliette  
DIAMOND MCCARTHY, LLP  
6504 Bridgepoint Pkwy  
Suite 500  
Austin, Texas 78730  
Telephone: (512) 617-5200  
Facsimile: (512) 617-5299

For DDH/Tanamera:

Kaaran Thomas  
MCDONALD CARANO WILSON LLP  
100 West Liberty  
10<sup>th</sup> Floor  
P.O. Box 2670  
Reno, Nevada 89505

For Toblak/USAIP

Lisa M. Poulin  
c/o Talitha B. Gray  
GORDON SILVER  
3960 Howard Hughes Pkwy  
9<sup>th</sup> Floor

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Las Vegas, Nevada 89169

4. Good Faith Compromise. This Agreement is entered into as a good faith compromise among the Parties for the complete and final settlement of the claims related to the Park Sites and Park Funds. By this settlement, no Party admits liability to any other Party in any respect, or makes any admission as to factual or legal contentions relating to the matters settled herein.

5. Plain Meaning. The Parties acknowledge that they have had the opportunity to be represented by counsel during negotiations of this Agreement and to consult with their respective attorneys regarding its meaning and effect. The Parties agree that (a) the terms and provisions of this Agreement are not to be construed more strictly against any of the Parties; and (b) it is their mutual intention that the terms and provisions of this Agreement be construed as having the plain meaning of the terms used herein.

6. Integration. This Agreement constitutes the entire agreement among the Parties on the subjects addressed herein. This Agreement is executed without reliance upon any representations by any person or entity concerning the nature, cause or extent of injuries, or legal liability therefore, or any other representations of any type or nature except as set forth herein. No contrary or supplementary oral agreement shall be admissible in a court to contradict, alter, supplement, or otherwise change the meaning of this Agreement. THE PARTIES ALSO ACKNOWLEDGE THE CONTESTED AND ADVERSARIAL NATURE OF THE DISPUTE REGARDING THE PARK FUNDS AND STIPULATE THAT IN EXECUTING THIS AGREEMENT THEY ARE NOT RELYING ON ANY REPRESENTATION BY ANY OTHER PARTY OR ITS/HIS AGENTS, REPRESENTATIVES OR ATTORNEYS, WITH REGARD TO (1) FACTS UNDERLYING THE LAWSUIT, (2) THE SUBJECT MATTER OR EFFECT OF THIS AGREEMENT, AND (3) ANY OTHER FACTS OR ISSUES WHICH MIGHT BE DEEMED MATERIAL TO THE DECISION TO ENTER INTO THIS AGREEMENT, OTHER THAN AS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

7. Amendments. This Agreement may be amended only by written agreement signed by each of the Parties, and any alleged breach of this Agreement may be waived only by a written waiver signed by the Party granting the waiver. This Agreement and any such amendments or waivers of breach may be executed either directly by the Parties, or on their behalf by authorized counsel.

8. Severability. If any term or provision of this Agreement shall be determined to be unenforceable or invalid or illegal in any respect, the unenforceability, invalidity or illegality shall not affect any other term or provision of this Agreement, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein.

9. Counterparts and Signatures. This Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be deemed an original and all of which together shall constitute but one and the same agreement. Signatures obtained by facsimile or email in .pdf format shall be deemed to be original signatures.

10. Enforcement of the Agreement. Each Party agrees to bear its own fees and costs with respect to any duties required of the Party under this Agreement; in any matter





Las Vegas, Nevada 89169

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11. Construction. This Agreement is to be governed by the law of the State of Nevada. The Bankruptcy Court shall retain exclusive jurisdiction over the interpretation and enforcement of this Agreement, as well as any disputes that may arise between the Parties relating to this Agreement, and the Parties consent to the exclusive jurisdiction of the Bankruptcy Court for these purposes.

12. Representations. Except as expressly stated herein, each Party warrants, represents and agrees that it (i) has not assigned, subrogated, pledged or transferred to any person, firm, partnership, corporation or other entity whatsoever any of the claims, counterclaims, actions, demands or causes of action to be released pursuant to the releases set forth in this Agreement and (ii) is fully authorized to enter into this Agreement without the consent of any third-parties. Specifically, each person signing the Agreement represents and warrants that upon obtaining entry of the Approval Orders, s/he has been authorized and empowered to sign this Agreement on behalf of the Party the person purports to represent and that this Agreement is lawful and binding obligations of the Party on whose behalf the person is signing.

13. Inurement. This Agreement will inure to the benefit of and will be binding upon the Parties and their respective heirs, executors, successors, assigns, grantees, administrators, executors and trustees.

DATED: January \_\_, 2009

**USACM LIQUIDATING TRUST**

By: \_\_\_\_\_  
Geoffrey L. Berman, in his capacity as  
Trustee of the USACM Liquidating Trust

DATED: January \_\_, 2009

**DDH FINANCIAL CORP**

By: \_\_\_\_\_  
Kreg Rowe  
Title: \_\_\_\_\_

DATED: January \_\_, 2009

**TANAMERA COMMERCIAL  
DEVELOPMENT, LLC**

By: \_\_\_\_\_

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DATED: January 9, 2009

**USACM LIQUIDATING TRUST**

By: Geoffrey L. Berman  
Geoffrey L. Berman, in his capacity as  
Trustee of the USACM Liquidating Trust

DATED: January \_\_, 2009

**DDH FINANCIAL CORP**

By: \_\_\_\_\_  
Kreg Rowe  
Title: \_\_\_\_\_

DATED: January \_\_, 2009

**TANAMERA COMMERCIAL  
DEVELOPMENT, LLC**

By: \_\_\_\_\_

involving, referring, or relating to the interpretation and enforcement of this Agreement; and in connection with any disputes that may arise between the Parties relating to this Agreement.

11. Construction. This Agreement is to be governed by the law of the State of Nevada. The Bankruptcy Court shall retain exclusive jurisdiction over the interpretation and enforcement of this Agreement, as well as any disputes that may arise between the Parties relating to this Agreement, and the Parties consent to the exclusive jurisdiction of the Bankruptcy Court for these purposes.

12. Representations. Except as expressly stated herein, each Party warrants, represents and agrees that it (i) has not assigned, subrogated, pledged or transferred to any person, firm, partnership, corporation or other entity whatsoever any of the claims, counterclaims, actions, demands or causes of action to be released pursuant to the releases set forth in this Agreement and (ii) is fully authorized to enter into this Agreement without the consent of any third-parties. Specifically, each person signing the Agreement represents and warrants that upon obtaining entry of the Approval Orders, s/he has been authorized and empowered to sign this Agreement on behalf of the Party the person purports to represent and that this Agreement is lawful and binding obligations of the Party on whose behalf the person is signing.

13. Inurement. This Agreement will inure to the benefit of and will be binding upon the Parties and their respective heirs, executors, successors, assigns, grantees, administrators, executors and trustees.

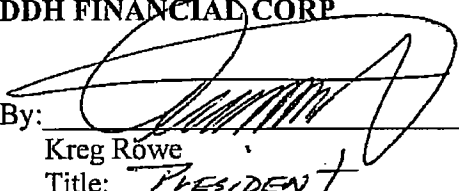
DATED: January \_\_, 2009

**USACM LIQUIDATING TRUST**

By: \_\_\_\_\_  
Geoffrey L. Berman, in his capacity as  
Trustee of the USACM Liquidating Trust

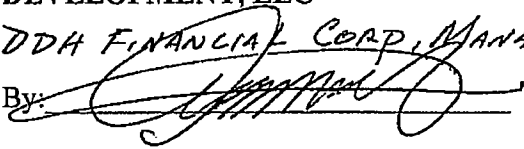
DATED: January 9, 2009

**DDH FINANCIAL CORP**

By:   
Kreg Rowe  
Title: PRESIDENT

DATED: January 9, 2009

**TANAMERA COMMERCIAL  
DEVELOPMENT, LLC**


**DDH FINANCIAL CORP. MANAGER**  
By: 

Kreg Rowe

Title: \_\_\_\_\_

DATED: January \_\_, 2009

**USA INVESTMENT PARTNERS, LLC**

By: 

Lisa M. Poulin, in her capacity as the  
Chapter 11 Trustee of USA Investment  
Partners, LLC

DATED: January \_\_, 2009

**TOBLAK, LLC**

By: 

Lisa M. Poulin, in her capacity as the  
Chapter 11 Trustee of USA Investment  
Partners, LLC, the sole member and  
manager of Toblak, LLC

Kreg Rowe

Title: \_\_\_\_\_

DATED: January \_\_\_\_, 2009

**USA INVESTMENT PARTNERS, LLC**

By: \_\_\_\_\_

Lisa M. Poulin, in her capacity as the  
Chapter 11 Trustee of USA Investment  
Partners, LLC

DATED: January \_\_\_\_, 2009

**TOBLAK, LLC**

By: \_\_\_\_\_

Lisa M. Poulin, in her capacity as the  
Chapter 11 Trustee of USA Investment  
Partners, LLC, the sole member and  
manager of Toblak, LLC

92

Kreg Rowe  
Title: PRESIDENT

DATED: January \_\_, 2009

**USA INVESTMENT PARTNERS, LLC**

By: \_\_\_\_\_

Lisa M. Poulin, in her capacity as the  
Chapter 11 Trustee of USA Investment  
Partners, LLC

DATED: January \_\_, 2009

**TOBLAK, LLC**

By: \_\_\_\_\_

Lisa M. Poulin, in her capacity as the  
Chapter 11 Trustee of USA Investment  
Partners, LLC, the sole member and  
manager of Toblak, LLC





## AMENDED AND RESTATED PLEDGE AGREEMENT

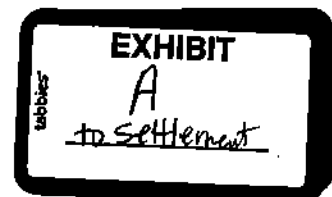
This AMENDED AND RESTATED PLEDGE AGREEMENT ("Amended Pledge Agreement") effective January 1, 2006 amends and restates that certain Pledge Agreement dated as of the 1<sup>st</sup> day of August 2002 by and between M.P. Tanamera, LLC, a Nevada limited liability company and USA Commercial Mortgage Company, a Nevada corporation, ("Pledgee"), acting on behalf of and for the benefit of the Lenders, under each of the Loans described in Recital C Below and adds DDH Financial Corp, a Nevada corporation ("DDH") and USA Investment Partners, LLC, a Nevada limited liability company ("USA") as parties hereto, with reference to the following facts:

A. M.P. Tanamera is a member holding a thirty-three and one-third percent (33 1/3%) membership interest in Tanamera Development, LLC a Nevada limited liability company owned in majority by USA or its affiliates. The Members of M.P. Tanamera are Emigh Investments (a Nevada limited liability company owned in majority by Linda A. Rowe) and as a minority Member, Greg Gough. Greg Gough is the Managing Member of M.P. Tanamera.

B. Under an Agreement dated July 30, 2002 between DDH (a Nevada corporation owned by Kreg D. Rowe and Linda A. Rowe) and Tanamera Commercial Development, LLC ("TCD"), DDH was employed by TCD at a monthly consulting fee, which was initially set at \$15,000 per month and was increased to \$20,000 per month effective January 1, 2005. Kreg Rowe and Linda Rowe (hereinafter collectively "Rowe") are husband and wife. The consulting fees paid to DDH directly benefits Linda Rowe, which M.P. Tanamera acknowledges is adequate consideration for the initial Pledge Agreement and this Amended and Restated Pledge Agreement. DDH and M.P. Tanamera are hereinafter collectively referred to as "Pledgor".

C. In the past, Rowe made numerous guarantees pursuant to loans with Pledgee, which have all been paid in full, with the exception of the following two loans ("Guaranteed Debt"):

<u>Date</u>	<u>Borrower</u>	<u>Original Amount</u>
7-21-00	Double Diamond Ranch	\$550,000
12-30-97	Pioneer Village Investors, LLC	\$4,000,000



D. Additionally and separately, Rowe is still obligated under the terms of a loan to Double Diamond Ranch ("DDR") (that has since been repaid) to reimburse Pledgee for unreimbursed legal and court costs related to foreclosure proceedings and the subsequent filing for protection under bankruptcy by DDR on October 24, 2001. For purposes of this Agreement, while still an ongoing obligation of Rowe, this obligation is not part of the Guaranteed Debt outlined in Recital C above but will be repaid as discussed in Section 5 of this Agreement below. USA agrees to provide a reasonable accounting and summary of the amount due with copies of the legal bills and supporting documentation showing the amounts expended by USA on these matters with an appropriate deduction for the amount reimbursed by court order.

E. Upon the sale of the assets underlying the notes outlined in Recital C above, the proceeds were not sufficient to repay the loans in full, thus rendering the guarantors liable.

F. The parties agree and acknowledge that all other notes listed in the Pledge Agreement dated August 1, 2002 not outlined in Recital C and D above have been paid in full and Rowe, DDH and M.P. Tanamera shall have no further liability pursuant to these repaid notes.

G. A portion of the Double Diamond Ranch note listed in Recital C above was advanced to Tanamera Homes, LLC, which company was subsequently merged into TCD on January 1, 2003. As of the date of the merger, TCD assumed a portion of the note owed by Tanamera Homes, LLC, which as of that date totaled \$785,535.50 including accrued interest.

H. DDH and Kreg Rowe have generated new business opportunities in Northern Nevada directly and indirectly benefiting Pledgee and its affiliates, including the projects being developed by Sparks Galleria, Investors, LLC, Preserve at Galleria, LLC, Cabernet Highlands, LLC, Tanamera Corporate Center, LLC, Tanamera Commercial Development, LLC or its assignee (known as "La Hacienda") and Vineyard Professional Campus, LLC, each of which are entities not owned by Tanamera Resort Partners, LLC ("New Projects").

I. USA is affiliated with Pledgee through common ownership and acknowledges good and valuable consideration has been received for the agreements included herein.

NOW THEREFORE, in consideration of the foregoing premises and recitals (which are true and correct) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and with the intent to be legally bound, the parties hereto hereby agree as follows:

1. The monthly consulting fees that have been paid and continue to be paid to DDH will be treated as a consulting expense to TCD rather than an advance against future distributions from TCD as originally agreed between the parties. Income allocable to the Members of TCD will be calculated after deduction for such expense. The Agreement

dated July 30<sup>th</sup> 2002 between the parties related to this consulting fee, is hereby rescinded retroactively and shall have no further force or effect.

2. Pledgee and its affiliate, USA, agree to utilize a portion of any distributions out of the New Projects to match dollar for dollar any payments Pledgor, DDH, Rowe or any other entity owned by Rowe make from distributions from the New Projects on the Guaranteed Debt. For example, if distributions are made from profits in Tanamera Corporate Center, LLC (by its parent Tanamera Properties, LLC) to USA and to DDH, and DDH uses such distribution to make a payment on the Guaranteed Debt outlined in Recital C above or the remaining Double Diamond Ranch obligation outlined in Recital D above, USA will match such payment up to the amount of the distribution. Notwithstanding the foregoing, any such payment made by USA or its affiliates for the benefit of Pledgor or Rowe, pursuant to the terms of this Section, will be made by way of a special allocation of profits to Rowe or DDH with a corresponding cash distribution, which will immediately be paid by Rowe or DDH to USA to be applied to the Guaranteed Debt outlined in Recital C or Double Diamond Ranch obligation outlined in Recital D, in order to avoid any tax liability for the benefit of USA or its affiliate.

3. TCD will be solely responsible for payment of the portion of the Guaranteed Debt and associated interest that it assumed in its combination with Tanamera Homes, LLC as discussed in Recital G above (which totals approximately \$1,063,000 including accrued interest as of 12-31-05). This debt will be treated as an obligation of TCD and not of the Guarantors and hence the Guarantors shall have no further obligation pursuant to the repayment of this debt. The portion of the Double Diamond Ranch note dated 7-21-2000 (approximately \$275,000 including interest as of 12-31-05), that was not included in the obligation assumed by TCD will remain the responsibility of the Guarantors, subject to the terms outlined in Section 2 above.

~~4. Under the original Pledge Agreement, M.P. Tanamera agreed to pledge any distributions it may otherwise be entitled to receive from Tanamera Development, LLC to the repayment of the Debt owed Pledgee or its Lenders until such debt was fully repaid. The parties earlier modified the Pledge Agreement verbally requiring that only 50% of such distributions to M.P. Tanamera would be applied to such debt and the other 50% would be paid to M.P. Tanamera, LLC in cash in order for M.P. Tanamera, LLC to pay taxes on such distributions. There now exists sufficient funding coming from the New Projects and from Toblak, LLC, as outlined in Section 5 below, to provide Pledgee with the comfort that the Guaranteed Debt and any outstanding legal expenses from DDR will be safely repaid and the parties hereby agree that M.P. Tanamera, LLC will hereafter be entitled to full payment of any distributions from Tanamera Development, LLC, without offset by Pledgee or its affiliates.~~

5 Toblak, LLC, an affiliate of Pledgee entered into a Second Amended Double Diamond Ranch Parks Agreement ("Parks Agreement") with the City of Reno and Double Diamond Ranch, LLC which is expected to result in net profits to Toblak, LLC in excess of the legal fees outlined in Recital D above, indirectly benefiting Pledgee. Pledgee agrees that Kreg Rowe was instrumental in providing this opportunity to Pledgee

and agrees that any profits stemming from the Parks Agreement will first be applied to any unreimbursed legal costs associated with obtaining the Parks Agreement, including the associated litigation and appeal, then to unreimbursed legal fees outlined in Recital D, third to any remaining balance under the Guaranteed Debt with any remaining amount split 50% with DDH and 50% with Pledgee. Pledgee agrees to provide an accounting of the legal fees and application for reimbursement filed with the court along with a copy of the court's award with reasonable supporting information.

6. In connection with the merger of Tanamera Homes into TCD and the fact that the liabilities assumed exceeded assets received, DDH's equity account was debited \$199,143. This transaction has resulted in the equity balances of USA and DDH differing from their ownership interests. USA and DDH agree that equalizing distributions will be made in calendar years 2006 and 2007 to eliminate this difference with half of the difference eliminated through calendar year 2006 distributions made by TCD and the other half of the difference eliminated through distributions payable by TCD in calendar year 2007, such that the equity accounts for the members shall thereafter reflect their ownership percentages.

7. Miscellaneous:

7.1 Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid, and shall be enforced to the fullest extent permitted by law.

7.2 Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act except those of the waiving party, which shall be extended by a period of time equal to the period of the delay.

7.3 Governing law: This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada.

7.4 Professional Fees. If either party commences an action against the other to interpret or enforce any of the terms of this Agreement or because of the breach by the other party of any of the terms hereof, the losing party shall pay to the prevailing party reasonable attorneys' fees, costs and expenses and court costs and other costs of action incurred in connection with the prosecution or defense of such action, whether or not the action is prosecuted to a final judgment. For the purpose of this Agreement, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photostating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an

attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The term "attorney" shall have the same meaning as the term "counsel."

7.5 Time of Essence. The parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by any party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

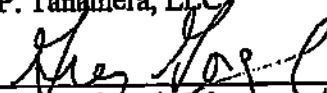
This agreement supersedes and replaces the Pledge Agreement dated the 1<sup>st</sup> day of August 2002 and any other oral or written agreements pursuant to these matters between the parties.

**PLEDGORS:**


M.P. Tanamera, LLC

By:   
Greg Gough, Managing Member

Emigh Investments, LLC, Member  
of M.P. Tanamera, LLC

By:   
Greg Gough, Manager

DDH Financial Corp

By:   
Kreg Rowe, President

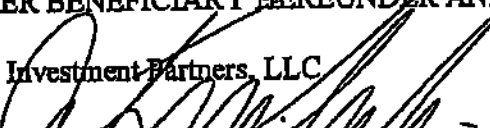
**PLEDGE:**

USA Commercial Mortgage Company, Manager

By:   
Joseph Milanowski, President

**OTHER BENEFICIARY HEREUNDER AND PARTY TO THIS AGREEMENT**

USA Investment Partners, LLC

By:   
Joseph Milanowski, Manager



**LEWIS  
AND  
ROCA**  
LLP  
LAWYERS

3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169-5996  
Telephone (702) 949-8320  
Facsimile (702) 949-8321

Roh Charles, NV State Bar No. 006593  
Email: rcharles@lrllaw.com

Counsel for USACM Liquidating Trust

E-Filed on 1/13/09

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

DOUBLE DIAMOND RANCH, LLC,  
Debtor.

Case No. BK-N-01-33665-GWZ

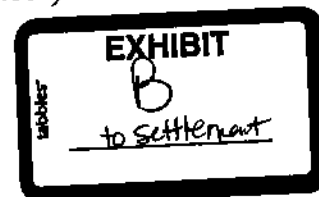
CHAPTER 11

**UNOPPOSED EX PARTE MOTION  
TO RE-OPEN CASE FOR LIMITED  
PURPOSE OF DIRECTING TICOR  
TITLE TO RELEASE FUNDS HELD  
IN ESCROW**

[No hearing required]

USACM Liquidating Trust (the "USACM Trust"), as a successor to USA Commercial Mortgage Company ("USACM"), requests that this Court re-open this Bankruptcy Case to issue an order directing Ticor Title to release funds held in escrow account 04004260 to the USACM Trust and, in support, shows the following:

1. The USACM Trust is successor-in-interest to USACM pursuant to the Third Amended Joint Chapter 11 Plan of Reorganization and Confirmation Order entered on January 8, 2007 in Case No. BK-S-06-10725-LBR (the "USACM Bankruptcy Court"), pursuant to, among other things, ¶¶ 10 & 28 of the Order Confirming The "Debtors' Third Amended Joint Chapter 11 Plan Of Reorganization," As Modified Herein filed on January 7, 2007 and section D.1 of Art. IV of the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization. Geoffrey L. Berman (the "USACM Trustee") serves as the trustee of the USACM Trust. Confirmation Order ¶ 30.



1           2.     USACM was involved in an adversary proceeding against Lowe Enterprises  
2 Residential Investors, LLC ("Lowe Enterprises") in this bankruptcy case, Adversary No.  
3 BK-N-03-05. The case was appealed through to the Ninth Circuit Court of Appeals as  
4 Case 04-15855 (the "Lowe Appeal").  
5

6           3.     USACM prevailed in the Lowe Appeal. See Exhibit A, Ninth Circuit  
7 Opinion in the Lowe Appeal.  
8

9           4.     Pursuant to a Stipulation entered in Case No. CV-N-03-0156-HDM-VPC in  
10 the United States District Court for the District of Nevada ("Stipulation"), funds have been  
11 held in escrow with Ticor Title Company ("Ticor Title" and the "Ticor Funds")) pending  
12 the outcome of the Lowe Appeal. The Stipulation is attached hereto as Exhibit B.  
13

14           5.     Pursuant to paragraph 6 of the Stipulation, if USACM prevailed in the Lowe  
15 Appeal, the Ticor Funds should be released to USACM; however, the release of the Ticor  
16 Funds requires this Court to enter an order directing Ticor Title to release the funds.  
17 Exhibit B, ¶ 6 ("If the decision on appeal by the Ninth Circuit is in favor of USACMC *and*  
18 *after entry of an appropriate Bankruptcy Court order* pursuant thereto to transfer the  
19 proceeds to USACMC, the clerk of the Bankruptcy Court or escrow agent shall transfer  
20 the proceeds to USACMC subject to any stay that may be entered by a court of competent  
21 jurisdiction."").  
22

23           6.     As reflected in the Certificate of Conference, counsel for the USACM Trust  
24 has conferred with counsel for Lowe Enterprises who stated that Lowe Enterprises will not  
25 oppose the release of the Ticor Funds to the USACM Trust.  
26



1           7.     In addition, right to possession of the Ticor Funds have been the subject of a  
2     dispute between the USACM Trust and DDH Financial, an affiliate of the original debtor  
3     in this bankruptcy case, Double Diamond Ranch. The USACM Trust and DDH Financial  
4     have settled their disputes regarding rights to the Ticor Funds and anticipate approval of  
5     the settlement by the USACM Bankruptcy Court.  
6

7           8.     As successor-in-interest to USACM, the USACM Trust requests that this  
8     Court enter an order directing Ticor Title to release the funds to USACM when it is  
9     presented with an order from the USACM Bankruptcy Court directing release of the Ticor  
10    Funds to the USACM Trust.  
11

12           WHEREFORE, the USACM Trust requests that this Court enter an order directing  
13    Ticor Title Company to release the funds held in escrow account 04004260 to the USACM  
14    Trust when presented with an order from the USACM Bankruptcy Court directing release  
15    of the Ticor Funds.  
16

17           January 13, 2009.

18                           **LEWIS AND ROCA LLP**

19                           By: /s/ Rob Charles  
20                           Rob Charles, NV 6593  
21                           3993 Howard Hughes Parkway, Suite 600  
22                           Las Vegas, Nevada 89169-5996  
23                           (702) 949-8320 (telephone)  
24                           (702) 949-8321 (facsimile)

25                           *Counsel for USACM Liquidating Trust*  
26

**Certificate of Service**

I certify that a copy of the foregoing, and a copy of the notice of electronic filing, were served via email, where an email address is listed, or by first class mail, postage prepaid, addressed as follows, on January 13, 2009:

Ralph H. Blakeney  
Jones Day  
3 Park Plaza, Suite 1100  
Irvine, California 92614  
Telephone: (949) 553-7552  
Facsimile: (949) 553-7539  
Email Address: rblakeney@jonesday.com

Janet L. Chubb  
jlc@jonesvargas.com  
Jones Vargas  
100 W. Liberty St., 12th Floor  
P. O. Box 281  
Reno, NV 89504-0281

Kaaran E. Thomas  
kthomas@mcdonaldcarano.com  
McDonald Carano Wilson LLP  
100 West Liberty Street, 10th Floor  
Reno, Nevada 89501

Talitha B. Gray  
tgray@gordonsilver.com  
Gordon Silver  
3960 Howard Hughes Pkwy.  
Ninth Floor  
Las Vegas, NV 89169

/s/ Carrie Lawrence  
Lewis and Roca LLP

**Certificate of Conference**

I certify that Barbara Balliette, co-counsel for the USACM Liquidating Trust, conferred with counsel for Lowe Enterprises Residential Investors, LLC, Ralph H. Blakeney, and provided him with a draft of this request. Mr. Blakeney informed Ms. Balliette and me via email that Lowe Enterprises is not opposed to Ticor Title Company releasing the funds in escrow to the USACM Trust.

/s/ Rob Charles  
Rob Charles  
Counsel for USACM Liquidating Trust

## **EXHIBIT B**

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**RECEIVED**  
JAN 23 2006  
**FILED**  
CLERK, U.S. DISTRICT COURT  
ANCHORAGE, ALASKA

JAN 18 2006

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

**USA COMMERCIAL MORTGAGE  
COMPANY,**

Appellee,

v.

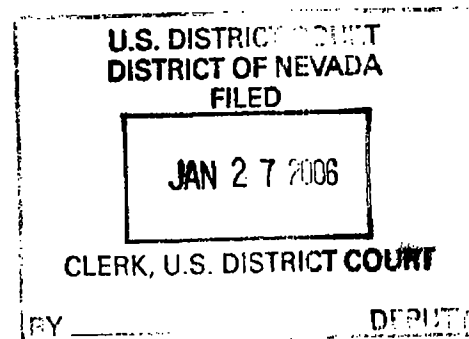
**LOWE ENTERPRISES  
RESIDENTIAL INVESTORS, LLC;  
BOHICA LLC, d/b/a DDR Devco, LLC;  
DOUBLE DIAMOND RANCH, LLC,**

Appellants.

No. 04-15855

D.C. No. CV-03-00156-HDM

**MEMORANDUM\***



Appeal from the United States District Court  
for the District of Nevada  
Howard D. McKibben, District Judge, Presiding

Argued and Submitted December 9, 2005  
San Francisco, California

Before: **KOZINSKI** and **W. FLETCHER**, Circuit Judges, and  
**HOLLAND\*\***, District Judge.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The Honorable H. Russel Holland, Senior United States District Judge for the District of Alaska, sitting by designation.

~~SCANNED~~

page 2

The district court correctly held that the bankruptcy court had no authority to modify the unambiguous terms of the settlement by extending the term of appellants' option without appellee's consent. The negotiated settlement specified consecutive thirty-day options to accept assignment of the Parks Agreement, and provided that modifications to the settlement agreement had to be approved by both parties. The bankruptcy court's extension of appellants' option period was a material modification of the settlement, and thus beyond the bankruptcy court's authority under Fed. R. Civ. P. 60(b) or Fed. R. Bank. P. 9006(b). The bankruptcy court did not utilize the procedures for modifying a confirmed plan. See 11 U.S.C. § 1127.

The district court also correctly held that the bankruptcy court could not equitably excuse appellants' failure to exercise their option on time. Option contracts are strictly construed, and "negligent failure to give the required written notice" is an insufficient reason to modify the terms of the options negotiated in the settlement agreement. Host Int'l, Inc. v. Summa Corp., 583 P.2d 1080, 1082 (Nev. 1978) (per curiam).

**AFFIRMED.**